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in the

Supreme Court

of the

United States

OCTOBER TERM, 1985

MANNIE BLACK and MOSES WILLIAMS,
Petitioners,

vs.

FREEMAN T. WYCHE,
Respondent.

On Writ of Certiorari to the District Court of Appeal of Florida for the Third District

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REPLY BRIEF OF PETITIONERS

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BEST AVAILABLE COPY

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MANNIE BLACK and MOSES WILLIAMS,
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A. QUESTION PRESENTED FOR REVIEW

Whether the First and Fourteenth Amendments to the United States Constitution prohibit a state court from rejecting decisions of the highest governing body of a church on questions of church doctrine, law, and the control of church property, by requiring and upholding an election to resolve the dispute by majority rule, where the church, though governed within the

congregation, is part of a body of churches which subscribe to a form of church government which vests authority in certain church officers and prohibits the resolution of disputes by voting.

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C. STATEMENT OF THE CASE

The petitioners rely on the statement of the case contained in their Petition. The petitioners disagree with the following statements of "fact" contained in the respondent's statement of the case:

At pages 1-2 of respondent's brief, several statements are made regarding the form of government followed by the Churches of Christ, i.e., that they are governed by majority rule of the congregation and that the body of elders do not constitute a rule making body. The respondent cites no record references for those statements. There is nothing in the record of this action to support the respondent's statements. The only evidence on the issue of the form of government followed by Churches of Christ is that contained in the appendix to the Petition

at App.40-54 which is to the effect that the elders are the highest authority of each congregation and that rule by majority vote is strictly prohibited. The unsupported statements of the respondent should not be considered by the Court.

D. **ARGUMENT**

In opposition to the Petition, the respondent first argues that the principles of res judicata bar review by this Court. The respondent argues that this Court's order denying jurisdiction in Williams v. Wyche, 104 S.Ct. 2145 (1984) is dispositive of the instant case. This Court's decision in the prior styled "appeal" is not dispositive because the federal issue raised in that "appeal" had not been raised in the lower court. Consequently, this Court had no jurisdiction to consider the issue even if it had so desired.

After this Court's denial of jurisdiction in Williams v. Wyche, 104 S.Ct. 2145 (1984), the federal question in the instant Petition was timely raised in the Third District Court. At a second hearing, where evidence in the form of the affidavits (App.40-54) was put before the trial court for the first time, the issue which gave rise to the federal question, i.e., whether the trial court had authority to order the Church to hold an election, was reconsidered by the trial court. (App.(1-5).

The petitioners were then entitled to raise the federal question in the Third District Court in the second appeal. At that point the federal question was timely raised and considered by the Third District Court. This Court, therefore, may properly exercise its jurisdiction to consider the question..

It is submitted that this Court's refusal to entertain a question which was not properly before it can not operate as a res judicata determination on the merits of that question. The question is only now, properly before this Court.

Secondly, the respondent argues that the first and fourteenth amendments do not afford protection to the petitioners because Churches of Christ are not hierarchical in their form of government. Admittedly, the Church does not have the traditional hierarchical structure of those churchs which have been the subject of this Court's pronouncements on the circumscribed role of state courts in church property disputes. Nevertheless, the fact that each congregation is autonomous does not mean

that they are governed by majority rule or that they should be forced by a state court to engage in a practice which is strictly prohibited by their form of government.

It is precisely because of the unique facts of this case, that this Court should exercise its jurisdiction and grant the petition.

E. CONCLUSION

For the reasons above, the Petition for Certiorari should be granted.

Respectfully submitted,

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F. CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three true and correct copies of the foregoing Reply Brief have been served upon MARK A. VALENTINE, ESQUIRE, 3050 Biscayne Boulevard, Suite 800, Miami, Fl 33137, by depositing in a United States Post Office, Coral Gables, Florida, Branch, with first class postage prepaid, this 28th day of December, 1985.

LISA BENNETT
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